

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:05CV243

NANCY R. STRETCHER,)
)
 Plaintiff,)
)
 Vs.)
)
MISSION HEALTH, INC., and)
HARTFORD LIFE AND ACCIDENT)
INSURANCE COMPANY,)
)
 Defendants.)

ORDER

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed October 20, 2005.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On October 20, 2005, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendants'

motions to dismiss. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on November 7, 2005. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the motion of Defendant Mission Health to dismiss the second count of the amended complaint be granted; that the motion of Defendant Hartford to dismiss be denied; and that the Plaintiff's notice of voluntary dismissal be stricken.

IT IS, THEREFORE, ORDERED that the motion of Defendant Mission Health, Inc., to dismiss the second count of the Plaintiff's amended complaint is **ALLOWED**, and the second count of the amended complaint is hereby **DISMISSED** as to both Defendants.

IT IS FURTHER ORDERED that the motion of Defendant Hartford Life and Accident Company to dismiss the Plaintiff's amended complaint is hereby **DENIED**, except as set forth above.

IT IS FURTHER ORDERED that the Plaintiff's notice of voluntary dismissal filed October 5, 2005, is hereby **STRICKEN**.

Signed: November 14, 2005

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

